

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
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SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23578 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	
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**STATEMENT OF THE UNITED STATES TRUSTEE
TO ORDER DIRECTING THE APPOINTMENT OF AN EXPERT PURSUANT TO
FEDERAL RULE OF EVIDENCE 706**

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE**

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), submits the following statement regarding a proposed Order Directing the Appointment of an Expert Pursuant to Federal Rule of Evidence 706 (the “Expert Order”). In support thereof, the United States Trustee respectfully states as follows:

On January 17, Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and Transform Holdco LLC (“Transform,” and together with the Debtors, the “Parties”) entered into the Asset Purchase Agreement (the “APA”), which was approved by the Bankruptcy Court on February 8, 2019. ECF No. 2507.

On May 25, 2019, Debtors filed the *Supplemental Motion to Enforce the Asset Purchase Agreement* (the “Supplemental Motion”). ECF No. 4029.

On May 26, 2019, Transform filed the *Adversary Complaint* (the “Adversary Complaint”). ECF No. 4033.

The Supplemental Motion and the Adversary Complaint each address various disputes between the Parties related to the APA including, without limitation, disputes concerning the (i) Specified Receivables Shortfall Amount (as defined in the APA), (ii) Prepaid Inventory Shortfall Amount (as defined in the APA), and (iii) the reconciliation of amounts of cash held in the Debtors' legacy cash management system and that may be allocated, as applicable, to the Debtors or Transform (the "Cash Reconciliation Amounts").

On July 11, 2019, the Court stated on the record that if the Parties were unable to reach agreement as to the Specified Receivables Shortfall Amount, the Prepaid Inventory Shortfall Amount or the Cash Reconciliation Amounts, the Court would consider appointing an independent third-party to assist in the calculation of such amounts

Upon information and belief, the Debtors and Transform plan to submit to the Court a proposed order appointing an expert (the "Expert") to assist in calculating the amounts in question.

The Expert Order was not subject to the filing of a motion or entered after notice and a hearing. See Bankruptcy Rule 9013. Accordingly, parties-in-interest were not provided with the opportunity to raise any issues regarding the Expert Order and the appointment of the Expert. Accordingly, the United States Trustee request that the Court direct the Debtors to file a motion on notice to parties in interest seeking authority for the requested relief so parties and interest can be heard with respect to the same.

Dated: New York, New York
October 30, 2019

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, Region 2

By: /s/ Paul K. Schwartzberg
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